Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Radio Services Providers	CC Docket 95-185

DOCKET FILE COPY ORIGINAL

COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY

SBC Communications Inc. ("SBC"), opposes the Commission's tentative conclusions, including the Commission's tentative conclusion that LEC/CMRS interconnection should be subjected to a "bill and keep," non-compensatory arrangement for the termination of local traffic. SBC, a provider of both wireline and wireless telecommunications services through its subsidiaries, Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Mobile Systems ("SBMS")(also operating in some markets as "Cellular One"), respectively, opposes the Commission's tentative conclusions based not only upon the provisions of The Telecommunications Act of 1996 (the "Telecommunications Act") which eliminate the Commission's role in fashioning interconnection arrangements among telecommunications carriers, except in limited and extraordinary circumstances, but upon at least three additional bases, as well: (1) Bill and keep is a huge step away from the Commission's goal of Minute is a Minute Pricing, (2) CMRS providers are sophisticated purchasers of interconnection with significant bargaining power and numerous options for interconnections, and (3) The Commission should not address only one piece of a multi-faceted interconnection issue in a vacuum. Rather, the Commission should establish a broad interconnection and access reform docket to address this issue within the context of universal service and related policies.

The Commission's stated long-term policy goal for this Docket is that of obtaining equivalent prices for functionally equivalent services, unless there are cost differences or policy considerations that justify different rates. The Commission's tentative conclusion that a bill and keep, no-charge interconnection interim remedy in the LEC/CMRS context is appropriate is a step in the

wrong direction. The Commission's tentative conclusion is based upon flawed economic theory and an incorrect view of the existing relationship between LECs and CMRS providers. First, the termination of telecommunications traffic requires costs to be incurred. To the extent that traffic is terminated at no charge, the originating carrier is not motivated to make economically efficient interconnection decisions, but instead is motivated to "free-ride" and to make economically unsound interconnection arrangements. While bill and keep could make economic sense in an agreement reached between interconnecting carriers where the exchange of traffic is expected to be approximately equal, in the LEC/CMRS context, approximately 80% of all traffic is CMRS to LEC, while only approximately 20% is LEC to CMRS. LECs, therefore, incur the vast majority of interconnection costs, for which they should be compensated.

Second, the Commission's evident view that CMRS providers are impotent in negotiations with LECs is incorrect. CMRS providers, as sophisticated consumers of interconnection services, have historically negotiated favorable interconnection arrangements under the guidelines of the Commission's CMRS Second Report. In addition, CMRS providers are attractive, high-volume consumers of interconnection services. As such, CMRS providers have available numerous alternatives to incumbent LEC interconnection. SBMS, for example, has minimized its interconnection costs—both within and outside of SWBT's five-state region--through the use alternative routing and serving arrangements. This evidence of CMRS provider market power is bolstered by the words of the largest representative of CMRS providers in the United States, the Cellular Telecommunications Industry Association (the "CTIA"). In Docket 94-54, the CTIA acknowledged in behalf of the CMRS industry that the practice of negotiating interconnection arrangements protects CMRS

providers from unreasonable discrimination, yet provides needed flexibility. The CTIA implored the Commission in Docket 94-54 to "be guided by the old adage, 'if it ain't broke, don't fix it.'" Nothing has changed that diminishes CMRS providers' strength in interconnection negotiations. If anything, the negotiating position of CMRS providers has been enhanced by the Telecommunications Act.

Finally, the Commission's stated goal of obtaining in the future equivalent pricing for functionally equivalent services (i.e., "minute is a minute" pricing) remains important and achievable. However, the Telecommunications Act requires that interconnection agreements be reached through a highly-structured negotiation, mediation, arbitration, and approval process; the Commission's role in the interconnection process, except in very limited contexts (including the Section 251 rulemaking process and the arbitration of disputes where a state commission fails to fill its role), has been eliminated. To reach its stated goal, the Commission must institute and complete several vital, interrelated proceedings. The "Regulatory Task List," the elements of which are indispensable to the introduction of full and fair competition to the telecommunications services marketplace, includes all of the Commission and state regulatory rulemakings or other initiatives which remove the cost of implicit universal service support and carrier of last resort obligations from the regulated rate structures of incumbent local exchange carriers. The Regulatory Task List includes, but is not limited to, proceedings to accomplish interconnection charge reform; access charge structure reform; and local exchange carrier rate rebalancing and geographic rate deaveraging. The Regulatory Task List also includes the introduction of explicit, equitable, non-discriminatory, targeted, and competitively neutral universal service support and carrier of last resort support funded by all providers of telecommunications services. The Commission cannot continue this

Docket, but must complete or facilitate the completion of the Regulatory Task List.

While SBC opposes the continuation of this Docket and strongly supports the initiation of additional proceedings, it also proposes in its Comments a set of "interconnection principles" that it intends to follow in the now-legislatively-mandated interconnection negotiations it will hold with requesting telecommunications carriers. The principles, applicable at a minimum in the interim period prior to the completion of the Regulatory Task List, include:

- Local service providers that permit their customers to originate local traffic that terminates on another local service provider's network must compensate the terminating local service provider for completing the calls on a basis approved pursuant to the Telecommunications Act.

- The applicable rates that may be charged for terminating local traffic which originates on a different local service provider's network:

  - Must be negotiated, mediated, or arbitrated between the respective local service providers pursuant to the provisions of Telecommunications Act;

  - May be unequal, may reflect differences in the values of the respective networks, and must be based upon the different network costs of the terminating traffic; and

  - May reflect differences in the universal service or carrier of last resort obligations of the respective local service providers.

SBC recommends these principles to the telecommunications industry.

While the Commission may not, as it tentatively concluded in the NPRM, institute rules that require any particular form, terms, conditions, or rates for interconnection, it can move forward expeditiously to complete the additional proceedings necessary to bring full and fair competition to the telecommunications industry. This, SBC urges that it must do.

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC COMMUNICATIONS INC. ("SBC"), by its attorneys and on behalf of its subsidiaries, including Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Mobile Systems, Inc. ("SBMS"),[1] files these Comments in response to the Commission's Notice of Proposed Rulemaking released on January 11, 1996 (the "NPRM").

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[1] SBC is a diversified provider of both wireless and wireline telecommunications services. SBC's land-line, local exchange company ("LEC"), SWBT, provides basic and leading-edge telephone services to over 10 million business and residence customers with over 14.2 million access lines in its five-state region. At the same time, SBC's commercial mobile radio service ("CMRS") provider, SBMS, is the second largest CMRS provider in the United States. SBMS operates in-region and out-of-region in 63 markets--including five of the top 15 (Chicago; Washington, D.C.; Boston, Dallas/Ft. Worth; and St. Louis)--with over 41 million potential customers ("In-region" for SBC is Texas, Oklahoma, Arkansas, Kansas, and Missouri.) Perhaps more importantly for the Commission's inquiry, over 62% of SBMS's potential customers are located outside of SWBT's five-state territory, where SBMS operates as Cellular One. In addition, SBC, through SBMS, owns PCS licenses for the Memphis, Little Rock, and Tulsa Major Trading Areas. In New York and Illinois, SBMS has also been approved to provide landline, local exchange service. SBC also provides cable television service in Montgomery County, Maryland and Arlington County, Virginia, through its cable television subsidiary, Southwestern Bell Media Ventures Inc. ("SBMV"), and other cable and video services through Southwestern Bell Video Services, Inc. ("SBVS").

I. INTRODUCTION

A. THIS PROCEEDING CANNOT CONTINUE UNDER ITS EXISTING FRAMEWORK AND SHOULD NOT RESULT IN AN ORDER CONSISTENT WITH THE TENTATIVE CONCLUSIONS OF THE NPRM

The NPRM deals generally with policy issues involved in establishing compensation arrangements for LEC to CMRS interconnection and specifically with the rates to be charged among LECs and CMRS providers for interconnection. The Commission espouses a "long-term policy" of implementing a price structure for functionally equivalent services, including services related to network interconnection, that makes them available to all consumers at the same prices, unless there are cost differences or policy considerations that justify different rates.[2] The Commission tentatively concludes, however, that it should impose a "bill and keep" interconnection rate policy together with an access charge-like pricing policy for dedicated transmission facilities for an unspecified "interim period," without proposing a timetable for implementation of its long-term policy.[3] The Commission seeks comment upon these and other tentative conclusions relating to the overall implementation of new, supplementary LEC/CMRS interconnection rules.[4]

The NPRM was released on January 11, 1996. Four weeks later, on February 8, 1996, President Clinton signed The Telecommunications Act of 1996 (the

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[2] Id.

[3] NPRM at 4.

[4] Id. at 4-10.

"Telecommunications Act").[5] Based upon the provisions of the Telecommunications Act, and based upon the errors in the premises under which the NPRM was drawn, this proceeding cannot and should not go forward.

At the outset, the Telecommunications Act renders this proceeding unnecessary. All LECs[6] and all telecommunications carriers that seek interconnection--including CMRS providers--are under a legislated duty to negotiate agreements, including the terms and conditions of interconnection agreements, in good faith.[7] The Commission has no role in this process until or unless the negotiation, mediation, arbitration, and approval process is not completed according to law.[8] The Commission, therefore, cannot implement its tentative conclusions.

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[5] For purposes of consistency, all references to what is or will become Title 47 of the United States Code, either as it exists under The Communications Act of 1934 (the "Communications Act"), as amended (47 U.S.C. §§151, et seq.), or under The Telecommunications Act of 1996 (Pub. L. No.104-104; 110 Stat. 56 (1996)), will be referenced by their codified section numbers (e.g., "Section 151" or "Section 252").

[6] The term "local exchange carrier" or "LEC," statutorily undefined until enactment of the Telecommunications Act, obtains a certain degree of ambiguity from its pre-Telecommunications Act usage in the NPRM.

The term "LEC" has been expanded under the Telecommunications Act from its ordinary usage to include (a) non-"incumbent" providers of telephone exchange service and exchange access service, as well as (b) CMRS providers, should the Commission determine it appropriate. Section 153(44). The NPRM identifies no foundational issues pertinent to non-incumbent LECs.

Accordingly, these comments focus upon the relationship between CMRS providers and the newly-defined "incumbent LECS." Section 251(h). Because the NPRM is stated in pre-Telecommunications Act terms, "LEC" will be used interchangeably with "incumbent LEC," unless otherwise indicated.

[7] Section 251 (c)(1). See also Section 153(49)(definition of "telecommunications carrier").

[8] Section 252 (e) (5). Only if a state commission fails to meet its duties under the Telecommunications Act may the Commission take a role in the process. And then, the Commission may only preempt the state as to that particular proceeding to fulfill the role of the state commission.

In addition to being barred by the Telecommunications Act, this proceeding should not go forward for several reasons:

- First, the Commission's tentative conclusion that bill and keep should be adopted, based upon the "economic theory" espoused by the proponents of bill and keep cited in the NPRM,[9] is unsound and does not lead the telecommunications industry toward the Commission's ultimate goal of economically efficient, Minute is a Minute pricing.[10]

- Second, the "status quo" upon which the Commission has based the NPRM, namely that of a CMRS industry made up of members that are impotent in interconnection negotiations with LECs, does not exist.

- Third, the interaction of LECs with CMRS providers in the realm of interconnection cannot be examined in a vacuum. This Commission must undertake proceedings relating to interconnection only in accordance with the provisions of the Telecommunications Act and in coordination with the other proceedings necessary to implement the full range of policies that will lead to Minute is a Minute pricing for all interconnection.[11]

For all of these reasons, the Commission should focus on the implementation of its long-term policies and dismiss the present NPRM.

B. THE COMMISSION AND THE PARTIES SHOULD TURN THEIR ATTENTION TO OTHER, RELATED, PROCEEDINGS

The expressed goals of the NPRM, including the long-term policy goal of "Minute is a Minute" interconnection and access, remain laudable. As stated by Chairman Hundt,

> Based on true facts, good law, and sound economics, we should design rules so that the market can make the best decisions; all consumers can benefit from head-

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[9] The foundation of the theory, cited extensively in the NPRM (see NPRM at 17-32) although not supported widely in the wireless industry, is that until fully utilized, the cost for the use of an existing network is near nothing.

[10] See NPRM at 4, 37.

[11] The latter set proceedings, as a part of the "Regulatory Task List," infra, are in addition to those required under the Telecommunications Act for the implementation of Section 251.

to-head competition; and those who need help to get access will get it.

What can we expect of a system that encourages competition, and is fair?

> First, the structure of charges between carriers should reflect new technology and general principles of cost causation. It should not fly in the face of economic and technical reality.
>
> Second, we need to take a hard look at the hard caps on the subscriber line charge. Here states' experience is useful.
>
> Illinois, Massachusetts, and California have all changed their telephone service rate structures in recent years. The results are that a greater percentage of the fixed costs incurred to connect end users to the network are reflected in a flat charge on the monthly phone bill.
>
> Third, support mechanisms should be targeted and collected and distributed in a competitively neutral manner. By this I mean that we need to reform our universal service system.[12]

While the status of LEC/CMRS interconnection is not as the Commission has been led to believe, the Commission should take up Chairman Hundt's charge and redirect its energies to completing its legislatively mandated tasks and those additional proceedings needed as a practical matter to bring competition to the provision of all telecommunications services and clarity to the negotiation process. These necessary proceedings should serve to begin the process of correcting the distortions that exist in current LEC rate structures and to endow the market with the benefits of competition. By removing subsidies that exist in current LEC rates, the Commission can facilitate its goal of equivalent pricing for functionally equivalent services,[13] allowing the vision of cost-driven, market-based, "Minute is a Minute" pricing to be realized.

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[12] Text of Speech presented by Chairman Reed Hundt, "Competition Is the Key," December 5, 1995. See also Text of Speech presented by Commissioner Rachelle Chong, "A Roadmap to More Competition and Less Regulation," January 30, 1996.

[13] See NPRM at 4, 37.

In this context and during the interim period, all parties seeking and providing interconnection must support the necessary regulatory initiatives and should re-think their negotiating positions. In furtherance of the implementation of the Telecommunications Act, SBC has undertaken in parallel to the charge of Chairman Hundt to devise a set of principles that, unlike mandated bill and keep, may be used by parties negotiating interconnection during the interim period that are consistent with the goals of the Telecommunications Act. SBC challenges the parties to this proceeding to take up the gauntlet of the Telecommunications Act and to assist in the equitable implementation of its benefits for competition.

II. DISCUSSION

A. THIS PROCEEDING HAS BEEN SUPERSEDED BY THE LEGISLATION

From the day that the Telecommunications Act became effective, all LECs operate under the legislated duty to negotiate the particular terms and conditions of agreements for interconnection.[14] These negotiations are required to be conducted in good faith and in accordance with the other provisions of the Telecommunications Act.[15] All telecommunications carriers seeking interconnection arrangements with LECs are under a corresponding duty to negotiate in good faith.[16] These duties, while supplemental to those imposed directly by Section 201 of the Communications Act and Commission proceedings brought under that section,[17] are

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[14] Sections 251(c)(1) and (2). Because of the numerous filings the Commission will undoubtedly receive on this aspect of the NPRM, SBC will not belabor the issue unduly, but will briefly set forth its arguments in this Section.

[15] Id.

[16] Section 251(c)(1).

[17] Section 251(I).

subject to a specific, detailed, and self-implementing mechanism described within Section 252.[18]

The Telecommunications Act moves interconnection negotiations to a highly structured framework, unlike the general obligations set forth in the CMRS Second Report.[19] Although the standards by which interconnection agreements will be evaluated are subject in some respects to a legislatively mandated rulemaking provision,[20] the basic principles are statutory. Congress has prescribed negotiations between telecommunications carriers seeking or providing interconnection and has given the states the role of approving the product of those negotiations, mediating disputed issues, and arbitrating issues over which impasse has been reached. Nowhere within this scheme is there a role for the Commission unless, at the end of the process, a state commission has failed to act.[21] To the extent the Commission continues to seek through the NPRM to impose conditions upon interconnecting carriers that have not been subjected to the rigors of the Section 252 process, it contravenes the language of the Telecommunications Act and the will of Congress. The NPRM, therefore, has been effectively superseded and cannot proceed to its tentative conclusion of a mandated rate structure.

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[18] Id. No rulemakings or other like proceedings are authorized by Section 252.

[19] See Implementation of Sections 3(n) of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994)("CMRS Second Report").

[20] Section 251(d).

[21] Section 252(e)(5). The Commission does have one additional role under Section 251. Under Section 251, the Commission's role includes the "complet[ion] of all actions necessary to establish regulations to implement the requirements of [Section 251]," are unaffected by Section 252's process. At the same time, the Commission cannot use the Section 251 implementation process to bootstrap a role in carrier negotiations or in the Section 252 process.

B. BILL AND KEEP CANNOT--AND SHOULD NOT--BE IMPOSED

1. THE TELECOMMUNICATIONS ACT PRECLUDES MANDATED BILL AND KEEP

Congress has also made it clear that "bill and keep" cannot be imposed upon interconnecting telecommunications carriers. Through its procedures for the negotiation, mediation, arbitration, and agreement approval process, the Telecommunications Act sets pricing standards that are to be used when there is no agreement among LECs and requesting telecommunications carriers on interconnection compensation.[22] In this context, the just and reasonable rate for interconnection service is to be cost-based and non-discriminatory and may include a reasonable profit.[23] While the Telecommunications Act specifically permits agreements among interconnecting LECs that "waive mutual recovery (such as bill-and-keep arrangements)," any such arrangement must be the voluntary result of negotiation and the decision of the parties to accept such "rates." Therefore, bill and keep cannot be mandated by the Commission through this NPRM or as a product of the Section 252 process.[24] Section 252 simply permits a state

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[22] If there is an agreement on the compensation arrangement, the review provided by the state commission is only as to whether that agreement discriminates against a non-party telecommunications carrier, or whether it is inconsistent with the public interest, convenience, and necessity. Section 251(e)(2)(A). The Telecommunications Act does not permit the state commission to substitute its view of what is "just and reasonable" upon two carriers that have negotiated a mutually beneficial arrangement. Only if there is arbitration on the compensation issues must the state commission decide just and reasonable compensation for both carriers.

[23] Section 252(d)(1).

[24] This conclusion is entirely consistent with the structure of the Act with regard to interconnection. By inserting "waiver" into this area, Congress has clearly prescribed a consensual, wholly voluntary act. Compulsion is antithetical to any concept of waiver. Concluding that LECs can be forced to "bill and keep" arrangements with any carrier would be wholly inconsistent with the hierarchy of burdens and benefits created by the Act (e.g., CMRS providers as carriers have certain duties, non-incumbent LECs have additional duties, and incumbent LECs have even more duties).

commission--or the Commission in the event a state commission fails to act--to approve such voluntary arrangements as "just and reasonable." Congress' express language precludes mandated "bill and keep" arrangements.

2. BILL AND KEEP IS AN UNSOUND POLICY

The Congressional rejection of mandatory bill and keep is sound policy. Even if the Commission could mandate bill and keep, however, that action would be ill-advised. The owners of incumbent networks (both wireless and wireline) have incurred significant costs in constructing their networks and will incur significant additional costs in growing those networks. For example, LECs throughout the United States have invested hundreds of billions of dollars in constructing the ubiquitous network which exists today; additional billions of dollars will be invested in the construction of new networks. This Commission should recognize that the foundation upon which all interconnection and compensation issues are based is that owners of networks are entitled to be compensated for the services provided by means of those networks in order to recover their investments.

Bill and keep sends totally inappropriate pricing signals and creates disincentives to investment. Bill and keep promotes "free riding," in which one carrier avoids making new investments and simply takes advantage of costs incurred by others.[25] As stated by the Cellular

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Given that interconnecting LECs cannot be required to accept "bill and keep" arrangements between themselves under the Act, clearly the less burdened CMRS providers cannot be handed that tremendous benefit by regulatory fiat.

[25] See Testimony of Dr. Jerry A. Hausman, attached hereto collectively as Attachment A. Dr. Jerry A. Hausman, the McDonald Professor of Economics at the Massachusetts Institute of Technology testified on behalf of Cellular One (SBMS operates Cellular One in the Boston area) in opposition to the bill and keep proposal submitted by MCI in the Massachusetts DPU Docket 94-185. Hausman Direct Testimony, at 11; Hausman Rebuttal Testimony, at 11.

Telecommunications Industry Association ("CTIA") in its comments in Docket 94-54,[26] "although the magnitude cannot be ascertained today, CMRS providers will incur substantial cost if they are required to interconnect with one another. These costs could be detrimental to consumer welfare because in many cases as explained above, such arrangements may not be the most efficient network solution. Further, the additional cost of mandated interconnection can most certainly delay or deny the public benefit of new services."[27] CTIA's assertions regarding the inefficiencies of any form of mandated interconnection, and on the cost incurred as a result of that mandated interconnection, are correct.[28]

As CTIA noted, there are "substantial costs" in interconnection and those costs must not be ignored. As CTIA stated in its comments,

> Unnecessary regulation may also serve to undercut the competitive process and thereby create inefficiency and diminish consumer welfare, for example, by creating a "free riding" problem in allowing others to bear and assume the risk of establishing new networks. These drawbacks are particularly significant given the goal of the NII to create a variety of networks that in turn are "networked," thereby allowing consumers access to a wide variety of information. A compulsory interconnection scheme may, in fact, reduce the incentives to build such networks, and in turn, reduce consumer choice.[29]

CTIA could not be more accurate in describing the problems which are inherent in the proposals submitted in Docket 94-54. The CTIA also could not be more correct in describing the problems

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[26] In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 94-54 ("Docket 94-54").

[27] CTIA Comments in Docket 94-54, at 32.

[28] This does not mean, however, that LECs should not be required to interconnect with CMRS providers. To the contrary, it is not only appropriate, but necessary, that such an interconnection arrangements be established, not only as a legal matter, but as a practical matter.

[29] CTIA Comments, Docket 94-54, at 33 (emphasis added)(citations omitted) .

imposed by bill and keep. The lack of appropriate compensation to existing network providers creates a similar disincentive and a risk of "free-riding" in the context of bill and keep, just as was contemplated by CTIA in Docket 94-54. The Commission must decline to establish or legitimize free-riding.

In addition to removing the incentive to invest, bill and keep sends incorrect pricing signals among the forms of interconnection which may be available.[30] In the interconnection arena, a carrier whose customer originates traffic which is terminated on another network is, in essence, buying interconnection. Absent real prices and the obligation to pay for that interconnection, the carrier which originates minutes will have no incentive to buy the most efficient form of interconnection. Without cost-based pricing signals, carriers will not make the most economically efficient interconnection decisions which would produce overall the least-cost interconnection arrangement.[31] Not only can the originating carrier impose unnecessary and inefficient costs on the network to which the traffic is terminated, but that carrier has no incentive to construct its own network to its fullest, most economically efficient extent.

From an economic standpoint, bill and keep might make some sense in an environment where two networks send an equal amount of traffic in each direction and the costs of each network were approximately equal. As the Washington Utilities and Transportation Commission stated in the context of new entrant interconnections, it would not adopt bill and keep, however, "if it appeared that new entrant [alternative local exchange companies ("ALECs")] would be imposing more costs on the incumbents than they would be incurring by

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[30] See Hausman Rebuttal Testimony, at 7-11.

[31] Hausman Rebuttal Testimony, at 7.

terminating incumbent traffic. This might happen if all traffic were from the ALECs to the incumbent LEC."[32] The Washington Order notes that "both would incur the costs of establishing a connection but with no traffic going to the new entrant the cost incurred by the incumbent provides it no benefit."[33] The Washington Commission goes on to conclude that "the only evidence on the record favors the theory that traffic will be close to balanced."[34]

SBC's experience is that traffic flows are decidedly unbalanced. Based on a study of a three-months usage in SBMS's Boston property, it was determined that 78.67 percent of the calls were mobile to land, 16 percent of the calls were land to mobile and 5.33 percent of the calls were mobile to mobile. It is reasonable to estimate, therefore, that approximately 80 percent of the wireless traffic occurring today is mobile to land-line calls.

In jurisdictions where it has been assumed that there would be an equal flow of traffic, bill and keep has sometimes been ordered and, as set forth above, this arrangement could make sense in limited circumstances. In circumstances where traffic flows are approximately equal, there is no reason for two companies simply to write checks to each other for the same amount. These circumstances are not present in the LEC/CMRS context today.[35] Because traffic is unbalanced and the cost burdens are likewise skewed, bill and keep should not be imposed.

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[32] See, e.g., Washington Utilities and Transportation Commission v. U.S. West, Docket Numbers UT-941464, UT-941465, UT-950164 and UT-950265, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints in Part, before the Washington Utilities and Transportation Commission (October 31, 1996)(the "Washington Order") at page 30.

[33] Washington Order at page 30 (emphasis added).

[34] Washington Order at page 30 (emphasis added).

[35] Id.

C. NEGOTIATED INTERCONNECTION ARRANGEMENTS ARE VIABLE UNDER THE TELECOMMUNICATIONS ACT

1. CONTRARY TO THE VIEW EXPRESSED IN THE NPRM, CMRS PROVIDERS HAVE SUFFICIENT POWER TO NEGOTIATE

The NPRM's stance in opposition to the existing negotiation policy and in favor of bill and keep is premised, in part, upon the Commission's evident belief that the negotiation process has not served or will not serve the public interest.[36] Although that conclusion has been rejected by Congress in lieu of mandated standards and a mandated process of negotiation interconnection,[37] the evidence shows that negotiation in this context works and that the Commission's tentative conclusions regarding LEC/CMRS interconnection are based upon an incorrect assessment of the current interconnection market. SBMS's experience confirms that the Commission's impression of the status quo in LEC/CMRS interconnection is inaccurate.

Contrary to the views expressed in the NPRM, CMRS providers generally have significant and sufficient bargaining power to obtain appropriate interconnection arrangements. The Commission has sufficiently empowered CMRS providers through previous regulatory action to prevent LECs from negotiating interconnection agreements with individual CMRS providers containing terms that are insufficient or significantly less favorable than the terms provided to any other carrier.

All LECs are required to provide CMRS providers with the type of interconnection they request, which must be of a quality that is not less favorable than that

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[36] NPRM at 43.

[37] Sections 251, 252.

furnished by the wireline carrier to its affiliated cellular carrier.[38] In addition, the interconnection arrangements that a CMRS provider may demand may differ from those which are used by the cellular carrier which is affiliated with the LEC in a particular market.[39] These Commission-imposed regulatory obligations ensure wireless carriers the opportunity to obtain access to local exchange networks, to have CMRS calls to landline networks completed, and to have landline originated calls terminated on their wireless networks.[40]

The experience of SBMS, SBC's wireless subsidiary, is illustrative of the ability of CMRS providers to obtain interconnection arrangements with LECs on reasonable terms. As set forth above,[41] SBMS has more customers and potential customers outside of SWBT territory than within. Through negotiations, SBMS has been able to obtain interconnection with Illinois Bell, Chesapeake and Potomac Telephone, NYNEX, and New England Telephone Company. These interconnection arrangements are in place in New York, Illinois, Indiana, Massachusetts, Virginia, Maryland, and Washington, D.C. It is important to note that in most instances, the LECs with whom SBMS negotiated interconnection have been affiliated with one or more CMRS providers in direct competition with SBMS; yet, SBMS has generally been able to negotiate reasonable terms and conditions for landline interconnection.

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[38] In Re: The Need for More Competition and Efficient Use of Spectrum For Radio Common Carrier Services, 59 Rad. Reg. 2 (PNF) 1275 (1986).

[39] Id.

[40] See also Section 332.

[41] See footnote 1.

2. CONTRARY TO THE TERMS OF THE NPRM, THE CTIA HAS SUPPORTED NEGOTIATION AS THE PROPER VEHICLE FOR INTERCONNECTION

Notwithstanding the evident tenor of its ex parte contacts, the CTIA has in the past strongly supported negotiation as the appropriate mechanism for establishing LEC to CMRS interconnection arrangements. In Docket 94-54, for instance, CTIA repeatedly advocated the efficacy of negotiated interconnection arrangements between LECs and CMRS providers. In its initial comments in Docket 94-54, CTIA noted that "despite some initial implementation problems, the current system of good faith negotiations for cellular interconnection protects licensees against unreasonable discrimination and permits sufficient flexibility to accommodate the various and diverse interconnection needs of numerous CMRS providers."[42]

CTIA noted in Docket 94-54 that "[m]ost LECs and cellular carriers are satisfied with the current negotiation process for interconnection with the public switched network and find that process generally produces fair and nondiscriminatory interconnection arrangements. This is due, in large part, to the fact that the CMRS market comprises (sic) sophisticated buyers of access services with sufficient information and expertise to negotiate equitable interconnection arrangements."[43]

CTIA went on to note in its comments in Docket 94-54 that "[a]fter nearly a decade of experience with the negotiation process, the customs and procedures pertaining to cellular interconnection are now well established and successful. Cellular companies and LECs

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[42] CTIA Comments, Docket 94-54, at 17-18 (emphasis added)(citations omitted).

[43] CTIA Comments, FCC Docket 94-54, at 18 (emphasis added).

have negotiated and implemented satisfactory interconnection agreements."[44] It cannot be by accident that CTIA did not add to its comments a caveat that it was not satisfied with compensation arrangements.

The largest representative of the wireless industry in the United States has, therefore, publicly advocated that the negotiation process has satisfied cellular carriers and produced fair and nondiscriminatory interconnection arrangements. The CTIA has attributed this result directly to the bargaining power and expertise of the wireless industry. This is the same wireless industry that suddenly--and incredibly--has become a 98-pound weakling unable to obtain reasonable interconnection or compensation arrangements without the intervention of the government.

In its Reply Comments in Docket 94-54, CTIA said it best: "In considering how best to ensure full and efficient interconnection arrangements between LECs and CMRS providers, the Commission should be guided by the old adage, 'if it ain't broke, don't fix it.'"[45] To the extent that the Commission has now tentatively concluded that negotiations for interconnection arrangements have entirely broken down between LECs and CMRS providers and that the Commission not only must intervene in the negotiation process, but must implement a punitive bill and keep compensation mechanism, it has done so in error. In light of CTIA's comments regarding the nature of LEC to CMRS interconnection arrangements as described in its comments in Docket 94-54, the Commission's justification for this tentative conclusion is

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[44] CTIA Comments, FCC Docket 94-54, at 19-20.

[45] CTIA Reply Comments, Docket 94-54, at 59.

confusing, at best.[46]

D. WIRELESS CARRIERS ARE NOT CAPTIVE CUSTOMERS OF INCUMBENT LECs AND CAN AND DO UTILIZE MULTIPLE POINTS OF INTERCONNECTION TO MINIMIZE THEIR ACCESS CHARGES

The NPRM assumes that wireless carriers are captives of LEC networks; said another way, the NPRM assumes that CMRS providers do not have alternatives for local interconnection. The NPRM also assumes that CMRS providers do not currently interconnect directly with interexchange carriers ("IXCs"). These assumptions about the status quo of CMRS interconnection are incorrect.

Instead, CMRS providers have numerous alternatives. In all markets, CMRS providers can also use their own extensive wireless networks to route traffic to the least costly point of interconnection. In nearly all markets in which CMRS providers operate, multiple interconnection points are available, thereby permitting CMRS providers to shop for the most efficient point or provider of access.

The experience of SBMS in its multi-market, in-region and out-of-region operations is instructive. SBMS has taken advantage of the multitude of interconnection alternatives, both in-region, where its affiliate provides landline services, and in regions where the LECs are unaffiliated. For instance, in the Dallas, Texas, area, SWBT, SBMS's affiliate, is a LEC, as are GTE Communications of the Southwest, Inc. ("GTE"), Muenster Telephone

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[46] CTIA recognized that LEC interconnection was efficient and warranted compensation. In addition, in the context of Docket 94-54, CTIA recognized that inefficient forms of interconnection, such as CMRS to CMRS interconnection, should not be encouraged through the application of erroneous economic theory or mandated through regulatory fiat. Only economically efficient forms of interconnection should be encouraged.

Cooperative, Inc. ("Muenster Telephone"), Comanche County Telephone ("Comanche Telephone"), and Sprint-United Telephone Company ("United Telephone"). SBMS directs cellular traffic to each of these LECs in the Dallas/Fort Worth MSA.[47] As shown on Attachment B, SBMS connects to tandems operated by SWBT and GTE and to end offices operated by GTE, SWBT, Muenster Telephone, Comanche Telephone, and United Telephone. SBMS also has a number of interexchange carriers that directly connect to the SBMS switch, thereby bypassing the LEC tandems for calls which terminate on SBMS's network.

SBMS has similar alternatives in markets where it is not affiliated with a LEC. In Boston, SBMS operations interconnect in part by purchasing access through the existing LEC tariffs. The Boston cellular system is quite complex, as it interconnects with NYNEX at appropriately 50 end offices and 6 tandems. SBMS also connects directly to Teleport, FiberLink, MFS, and to AT&T IXC services, and by tandem connection to other IXCs SBMS is able to utilize these multiple points of access because it can direct traffic over its own network to the point of interconnection where the charges are least expensive. Similar examples arise in SBMS operations in Washington/Baltimore, Chicago, and New York.

Further, SBMS is not captive to a single provider for special access services. In each instance where special access is required, SBMS performs a cost analysis to determine which mode of interconnection is most efficient. In those instances where the incumbent LEC services are least costly, that company's special access service is acquired. In many instances, however, microwave or CAP facilities are significantly less expensive (in some cases as much as 20-40

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[47] See Attachment B which depicts the PSTN interface arrangement for SBMS Dallas system.